

Public Works Department Operating Procedure

Subject

Review Criteria Policy for Acceptance of Conservation Easements for Non-Contiguous Land Bank

March 16, 2009

1 PURPOSE

In conformance with City of Durham Stormwater Development Performance Standards Section 70-737, the City of Durham may accept a recorded permanent conservation easement on property for Land Bank “donor parcels”. Parcels being considered should be submitted for review as early as possible (prior to site plan review) so as to speed the review process.

In accepting these easements, the City of Durham is taking on a perpetual monitoring and management responsibilities for the easement. Therefore, non contiguous land bank donor parcel easements will only be accepted where the proposed easement is located on property for which the City would have an ongoing perpetual interest in managing the property’s water quality benefits.

2 POLICY

The proposed easement / donor parcel will be reviewed for the following:

1. Factors supporting acceptance of an easement:

- The parcel is a **wooded riparian area** and is shown as an area for protection on a City of Durham or other published **Critical Area Protection Plan** for water quality, for example Upper Neuse Clean Water Initiative (UNCWI), Ellerbe Creek Critical Area Protection Plan (Task 5.2 of the Ellerbe Creek Watershed Plan), Third Fork Creek Critical Area Protection Plan (when available), New Hope Corridor Open Space Plan, Little River Open Space Plan, Northeast Creek Open Space Plan, and East Durham Open Space Plan.
- The parcel contains **stream buffer outside of 50ft** from the stream bank. The parcel contains land outside of the 50ft stream buffer but inside a 100 ft stream buffer (if one were drawn). Land beyond a 100 ft stream buffer may be used as a donor parcel at the rate of 120% of the property used for the nitrogen reduction calculations. Note that the 50 ft stream buffer is already protected by City of Durham and Neuse Buffer Requirements.
- The parcel contains water conveyances (for example **ephemeral stream or shallow ditch**) that would not require a buffer under the current UDO regulations.
- **Existing wetlands** are identified on the parcel.
- **Floodplain** is identified on the parcel. Note that floodway is not accepted.
- Existing **vegetated steep slopes** are identified on the parcel to be preserved.
- The **development of the donor parcel would result in additional impervious area.**
- The parcel **connects** to broader water quality protection areas such as wooded riparian areas.
- The parcel contains Durham Inventory of Natural Areas and Rare Species.

- The **size** of the proposed easement is commensurate with the benefits of accepting the perpetual responsibility for the monitoring the easement. Larger parcels are easier to maintain and generally have greater water quality benefits.
- For properties without features listed above, does it contain other factors that would make its preservation for water quality in the public interest? For instance, does it have potential suitability for the preservation of a significant stand of mature hardwoods, or provide water quality benefits such as a large amount of open space offered versus what would be required to meet the nitrogen treatment needed?

2. Factors against acceptance of an easement:

- The parcel **abuts a residential area** such as an existing or proposed subdivision. A wooded riparian area that abuts an existing residential development will typically require much more intensive and on-going monitoring. The water quality benefits derived from the acceptance of such an easement would need to be very clear to take on the overall perpetual monitoring of the property and the potential enforcement issues. Modification to the conservation easement area may be necessary for acceptance as a donor parcel area (ie. A strip of land adjacent to the subdivision may be excluded from the donor parcel).
- The City lacks adequate **access** to the proposed donor parcel. Access is needed for monitoring purposes.
- The property shows **evidence of land management problems**, such as trash dumping, adjoining landowner encroachments, previous uses that might cause environmental or management concerns, or related issues.
- **Small isolated tracts** less than ½ acre.

3. Modifications to Donor Parcels to Support Acceptance

- Agricultural land that is proposed to be reforested by replanting will be considered.
- Reforestation by planting of an unforested buffer.
- Removal of existing impervious area and reforestation.

4. Parcels that will not be accepted as Donor Parcels:

- Parcels **within a subdivision** that includes an established Homeowner Association. Homeowner open space is not acceptable.
- Properties that have previously **met some other City of Durham or Durham County requirement** such as being used for a open space or density requirement or for a Nutrient Bank or credit.
- Agricultural lands that are continuing to be **actively used for agricultural purposes** will not be accepted.
- Lands being used for **unapproved logging** activities.

5. Land that will not Count Towards Donor Amount:

- The portion of parcels that are already providing for nitrogen or other water quality credit should be subtracted from any calculations. (ie, **no double counting**)
- The portion of parcels that are in a stream buffer or floodway or non-encroachment area will not count towards the Donor Amount.